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6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2022-0427; FRL-10165-01-R9]

Air Plan Approval and Limited Approval-Limited Disapproval; California; Antelope Valley Air Quality Management District; Stationary Source Permits; New Source Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing approval, and a limited approval and limited disapproval of a revision to the Antelope Valley Air Quality Management District (AVAQMD or "District") portion of the California State Implementation Plan (SIP). The EPA is proposing to take action on nine rules submitted on August 3, 2021. We are proposing approval of three rules, and limited approval and limited disapproval of six rules. These revisions concern the District's New Source Review (NSR) permitting program for new and modified sources of air pollution under part D of title I of the Clean Air Act (CAA or "Act"). If finalized, this action will update the AVAQMD's current SIP with nine revised rules. We are taking comments on this proposal and plan to follow with a final action.

DATES: Comments must be received on or before [**Insert date 30 days after date of publication in the *Federal Register***].

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R09-OAR-2022-0427 at *https://www.regulations.gov.* For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is

considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.* If you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Shaheerah Kelly, Permits Office (Air-3-1), U.S. Environmental Protection Agency, Region IX, (415) 947-4156, *kelly.shaheerah@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us," and "our" refer to the EPA.

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DEFINITIONS

For the purpose of this document, we are giving meaning to certain words or initials as follows:

(i) The word or initials *AVAQMD* or *District* mean or refer to the Antelope Valley Air Quality Management District.

(ii) The word or initials *CAA* or *Act* mean or refer to the Clean Air Act, unless the context indicates otherwise.

(iii) The word or initials *CARB* mean or refer to the California Air Resources Board.

(iv) The initials *CFR* mean or refer to Code of Federal Regulations.

(v) The initials or words *EPA*, *we*, *us* or *our* mean or refer to the United States Environmental Protection Agency.

(vi) The initials *NA* mean or refer to nonattainment.

(vii) The initials *NAAQS* mean or refer to the National Ambient Air Quality Standards.

(viii) The initials *NSR* mean or refer to New Source Review.

(ix) The initials *NNSR* mean or refer to nonattainment New Source Review.

(x) The initials *SIP* mean or refer to State Implementation Plan.

(xi) The word *State* means or refers to the State of California.

(xii) The word *TSD* means or refers to the Technical Support Document.

I. The State's Submittal

A. What rules are in the current SIP?

Table 1 lists the rules in the current SIP with the dates they were adopted or amended by AVAQMD, submitted by the California Air Resources Board (CARB), the governor's designee for California SIP submittals, and approved by the EPA.

TABLE 1 – CURRENT SIP RULES

RULE	RULE TITLE	AMENDMENT OR ADOPTION DATE	SUBMITTAL DATE	EPA ACTION DATE	FR CITATION
Regulation II (Permits)					
Rule 206	Posting of Permit to Operate	2/21/1976	4/21/1976	11/9/1978	43 FR 52237
Rule 219	Equipment Not Requiring a Written Permit Pursuant to Regulation II	9/4/1981	10/23/1981	7/6/1982	47 FR 29231
Regulation XIII (New Source Review)					
Rule 1301	General	12/7/1995	8/28/1996	12/4/1996	61 FR 64291
Rule 1302	Definitions	12/7/1995	8/28/1996	12/4/1996	61 FR 64291

RULE	RULE TITLE	AMENDMENT OR ADOPTION DATE	SUBMITTAL DATE	EPA ACTION DATE	FR CITATION
Rule 1303	Requirements	5/10/1996	8/28/1996	12/4/1996	61 FR 64291
Rule 1304	Exemptions	6/14/1996	8/28/1996	12/4/1996	61 FR 64291
Rule 1306	Emission Calculations	6/14/1996	8/28/1996	12/4/1996	61 FR 64291
Rule 1309	Emission reduction Credits	12/7/1995	8/28/1996	12/4/1996	61 FR 64291
Rule 1309.1	Priority Reserve	12/7/1995	8/28/1996	12/4/1996	61 FR 64291
Rule 1310	Analysis and Reporting	12/7/1995	8/28/1996	12/4/1996	61 FR 64291
Rule 1311	Power Plants	2/25/1980	4/3/1980	1/21/1981	46 FR 5965
Rule 1313	Permits to Operate	12/7/1995	8/28/1996	12/4/1996	61 FR 64291

B. What rules did the State submit?

The CARB provided submittals to the EPA on October 30, 2001, April 22, 2020, and August 3, 2021 (hereafter referred to as the "2001 Submittal," "2020 Submittal," and "2021 Submittal," respectively), for revisions to the AVAQMD's NSR permitting program in the California SIP.

The CARB's 2021 Submittal provided the amended NSR permitting program rules listed in Table 2 that were adopted by the AVAQMD and submitted by the CARB for inclusion in the SIP. The submitted rules listed in Table 2 would replace the current EPA-approved SIP rules that are listed in Table 1. The rule subsections 1302(C)(5) and 1302(C)(7)(c) are not submitted for inclusion in the California SIP because they are requirements for regulating toxic air contaminants (TAC) and hazardous air pollutants (HAP) under the AVAQMD Rule 1401 (New Source Review for Toxic Air Contaminants).[1]

TABLE 2 – SUBMITTED RULES

RULE	RULE TITLE	ADOPTION OR AMENDMENT DATE	SUBMITTAL DATE[a]
Regulation II (Permits)			
Rule 219	Equipment not Requiring a Permit	6/15/2021	8/3/2021
Regulation XIII (New Source Review)			
Rule 1300	New Source Review General	7/20/2021	8/3/2021

[1] Subsections 1302(C)(5)(d) and 1302(C)(7)(c)(iii) of Rule 1302 specifically state that subsections 1302(C)(5) and 1302(C)(7)(c) are not submitted to the EPA and are not intended to be included as part of the California SIP.

Rule 1301	New Source Review Definitions	7/20/2021	8/3/2021
Rule 1302 (except 1302(C)(5) and 1302(C)(7)(c))	New Source Review Procedure	7/20/2021	8/3/2021
Rule 1303	New Source Review Requirements	7/20/2021	8/3/2021
Rule 1304	New Source Review Emissions Calculations	7/20/2021	8/3/2021
Rule 1305	New Source Review Emissions Offsets	7/20/2021	8/3/2021
Rule 1306	New Source Review for Electric Energy Generating Facilities	7/20/2021	8/3/2021
Rule 1309	Emission Reduction Credit Banking	7/20/2021	8/3/2021

[a] The submittal for Rules 219, 1300, 1301, 1302, 1303, 1304, 1305, 1306, 1309, and 1700 was transmitted to the EPA via a letter from CARB dated August 3, 2021.

The CARB's 2001 and 2020 Submittals requested removal of the rules listed in Table 3 from the District's portion of the California SIP because they were locally rescinded.

TABLE 3 – RESCINDED RULES

RULE	RULE TITLE	EPA APPROVAL DATE (FR CITATION)	RESCISSION DATE	SUBMITTAL DATE
Regulation II (Permits)				
Rule 206	Posting of Permit to Operate	11/9/1978 (43 FR 52237)	1/21/2020	4/22/2020
Regulation XIII (New Source Review)				
Rule 1309.1	Priority Reserve	12/4/1996 (61 FR 64291)	3/20/2001	10/30/2001
Rule 1310	Analysis and Reporting	12/4/1996 (61 FR 64291)	3/20/2001	10/30/2001
Rule 1311[a]	Power Plants	1/21/1981 (46 FR 5965)	3/20/2001	10/30/2001
Rule 1313	Permits to Operate	12/4/1996 (61 FR 64291)	3/20/2001	10/30/2001

[a] Rule 1311 was rescinded by South Coast AQMD on June 28, 1990 and submitted to the EPA for removal from the SIP on January 28, 1992 (see 64 FR 71660, December 22, 1999). Rule 1311 was rescinded by AVAQMD on March 20, 2001 and submitted to the EPA for removal from the SIP on October 30, 2001.

The CARB's 2021 Submittal also requested that all previous versions of Rule 219 and the rules under Regulation XIII codified in 40 CFR 52.220 prior to July 1, 1997, as listed in Table 4, which are in effect within the jurisdiction of the AVAQMD be removed from the California SIP. These rules will be superseded by the submitted versions of Rule 219 as amended on June 15,

2021, and Rules 1300 through 1306, and 1309 as amended on July 20, 2021, upon the EPA's approval of these rules into the California SIP.

The District was officially formed on July 1, 1997, as the agency with jurisdiction over the Los Angeles County portion of the Mojave Desert Air Basin. Prior to that time, the jurisdiction of the Antelope Valley area was part of the Los Angeles County Air Pollution Control District (APCD), the Southern California APCD, and the South Coast AQMD.

TABLE 4 – CODIFIED RULES IN 40 CFR 52.220 PRIOR TO JULY 1, 1997

RULE	SUBMITTAL AGENCY	SUBMITTAL DATE	EPA APPROVAL DATE (FR CITATION)
Regulation II (Permits)			
Rule 11 (Exemptions)	Los Angeles County APCD	6/30/1972	9/22/1972 (37 FR 19812)
Rule 219	Southern California APCD	4/21/1976	11/9/1978 (43 FR 52237)
Rule 219	Southern California APCD	8/2/1976	11/9/1978 (43 FR 52237)
Rule 219	Los Angeles County APCD	6/6/1977	11/9/1978 (43 FR 52237)
Rule 219	South Coast AQMD	10/23/1981	7/6/1982 (47 FR 29231)
Regulation XIII (New Source Review)			
Rules 1301, 1303, 1304, 1305, 1306, 1307, 1310, 1311, and 1313	South Coast AQMD	4/3/1980	1/21/1981 (46 FR 5965)
Rules 1302 and 1308	South Coast AQMD	8/15/1980	1/21/1981 (46 FR 5965)
Rules 1301, 1302, 1303, 1304, 1305, 1306, 1307, 1308, 1310, 1311, and 1313	Los Angeles County APCD	9/5/1980	6/9/1982 (47 FR 25013)
Rules 1301, 1302, 1309, 1309.1, 1310, and 1313, adopted on 12/7/1995; Rule 1303 adopted on 5/10/1996; and Rules 1304 and 1306 adopted on 6/14/1996.	South Coast AQMD	8/28/1996	12/4/1996 (61 FR 64291)

On February 3, 2021, the amended Rules 219, 1300, 1301, 1302 (except 1302(C)(5) and 1302(C)(7)(c)), 1303, 1304, 1305, 1306, and 1309 were deemed complete by operation of law to meet the completeness criteria in 40 CFR part 51, appendix V, which must be met before formal EPA review. Additionally, on October 22, 2020, rescinded Rule 206 was deemed complete by

operation of law, and on April 30, 2002, rescinded Rules 1309.1, 1310, 1311, and 1313 were deemed complete by operation of law to meet the completeness criteria in 40 CFR part 51, appendix V.

C. What is the purpose of the submitted rule revisions?

The rules listed in Table 2 are intended to replace the rules currently in the SIP as listed in Table 1. The submitted rules are also intended to satisfy the minor NSR and nonattainment NSR (NNSR) requirements of section 110(a)(2)(C) and part D of title I of the Act, and the EPA's implementing regulations at title 40 of the Code of Federal Regulations (CFR) part 51.[2] Minor NSR requirements are generally applicable for SIPs in all areas, while NNSR requirements apply only in areas designated as nonattainment for one or more National Ambient Air Quality Standards (NAAQS). The AVAQMD is currently designated Severe nonattainment for the 2015 ozone NAAQS. See 40 CFR 81.305. Therefore, the designation of AVAQMD as a federal ozone nonattainment area triggered the requirement for the District to develop and submit an NNSR program to the EPA for approval into the California SIP.

II. The EPA's Evaluation

A. What is the background for this proposal?

Section 110(a) of the CAA requires states to submit regulations that include a pre-construction permit program for new or modified stationary sources of pollutants, including a permit program as required by part D of title I of the CAA.

On October 26, 2015, the EPA finalized a revised 8-hour NAAQS for ozone, which was lowered from 0.75 parts per billion (ppb) to 0.70 ppb[3]. On June 4, 2018, the Los Angeles County portion of the Mojave Desert Air Basin, under the jurisdiction of the AVAQMD, was designated

[2] The CARB also submitted a PSD rule for SIP inclusion (AVAQMD Rule 1700, 'Prevention of Significant Deterioration (PSD)'). We intend to take action on the District's PSD rule in a subsequent rulemaking.
[3] 80 FR 65291 (October 26, 2015).

as nonattainment for 2015 8-hour ozone NAAQS and classified Severe-15.[4,5] (40 CFR 81.305.) This designation became effective on August 3, 2018. On December 6, 2018, the EPA finalized the implementation rule for the 2015 ozone NAAQS, which required the AVAQMD to submit an NSR certification to the EPA by August 3, 2021 (83 FR 62998). On August 3, 2021, the CARB submitted to the EPA the amended NSR rules listed in Table 2 and requested to remove the rescinded rules listed in Table 3 and the rules listed in Table 4. The 2021 Submittal from the CARB is intended to satisfy this NSR requirement.

The NSR rules contain the District's preconstruction permit program for new and modified major stationary sources for areas designated nonattainment for at least one NAAQS. They also include the District's minor NSR permit program. We provide a more detailed analysis in our technical support document (TSD), which is available in the docket for this proposed action.

B. How is the EPA evaluating the rules?

The EPA has reviewed the AVAQMD rules listed in Table 2 for compliance with the CAA requirements as follows: (1) the general SIP requirements as set forth in CAA section 110(a)(2), including 110(a)(2)(A) and 110(a)(2)(E)(i); (2) the stationary source preconstruction permitting program requirements as set forth in CAA part D of title I, including CAA sections 172(c)(5), 173, and 182; (3) the requirements for the review and modification of major sources in accordance with 40 CFR 51.160-51.165 as applicable in Severe ozone nonattainment areas; (4) the requirements for the review of new major stationary sources or major modifications in a designated nonattainment area that may have an impact on visibility in any mandatory Class I federal area in accordance with 40 CFR 51.307; (5) the SIP revision requirements as set forth in CAA sections 110(l) and 193; and (6) the provisions of CAA section 302(z).

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[4] 83 FR 25776 (June 4, 2018). A classification of Severe-15 under the 2015 ozone NAAQS is an area with a design value of 0.105 ppm up to but not including 0.111 ppm.

[5] 40 CFR 51.1105 provides anti-backsliding requirements for areas that were nonattainment for standards that were revoked. The AVAQMD has the same designation of Severe for the 1997 8-hour, 2008 8-hour, and the 2015 8-hour ozone NAAQS. Therefore, the nonattainment NSR requirements are the same, and have not changed.

Sections 110(a)(2) and 110(l) of the Act require that each SIP or revision to a SIP submitted by the State must be adopted after reasonable notice and public hearing. In addition, section 110 of the Act requires that SIP rules be enforceable. Section 110(a)(2)(C) of the Act requires each SIP to include a program to regulate the modification and construction of any stationary source within the areas covered by the SIP as necessary to assure attainment and maintenance of the NAAQS. Section 110(a)(2)(E)(i) of the Act requires that each SIP provide necessary assurances that the state will have adequate personnel, funding, and authority under state (and, as appropriate, local) law to carry out such implementation plan.

Part D of title I of the Act contains the general requirements for areas designated nonattainment for a NAAQS (section 172), referred to as nonattainment NSR (NNSR), including preconstruction permit requirements for new major sources and major modifications proposing to construct in nonattainment areas (section 173) and the de minimis SIP requirements for Severe nonattainment areas (sections 182(c)(6) and 182(d)).

The EPA's regulations at 40 CFR 51.160-51.164 provide general programmatic requirements to implement the statutory mandate under section 110(a)(2)(C) of the Act that is commonly referred to as the "general" or "minor" NSR program. These NSR program regulations impose requirements for approval of state and local programs that are more general in nature as compared to the specific statutory and regulatory requirements for NSR permitting programs under part D of title I of the Act.

The EPA's regulations at 40 CFR 51.165 set forth the EPA's regulatory requirements for SIP-approval of a nonattainment NSR permit program. Our review also evaluated the submittal for compliance with the NNSR requirements applicable to Severe ozone nonattainment areas and ensured that the submittal addressed the NNSR requirements for the 2015 ozone NAAQS.

The EPA's regulations at 40 CFR 51.307 set forth the protection of visibility requirements that apply to NSR programs. This provision requires that certain actions be taken in consultation with the local Federal Land Manager if a new major source or major modification

may have an impact on visibility in any mandatory Federal Class I Area.

Section 110(l) of the Act prohibits the EPA from approving any SIP revisions that would interfere with any applicable requirement concerning attainment and reasonable further progress (RFP) or any other applicable requirement of the CAA.

Section 193 of the Act, which only applies in nonattainment areas, prohibits the modification of a SIP-approved control requirement in effect before November 15, 1990, in any manner unless the modification insures equivalent or greater emission reductions of such air pollutant.

Section 302(z) of the Act defines the term "Stationary Source" as generally any source of an air pollutant except those emissions resulting directly from an internal combustion engine for transportation purposes or from a nonroad engine or nonroad vehicle as defined in title II of the Act.

Our TSD, which can be found in the docket for this rule, contains a more detailed discussion of the approval criteria.

C. Do the rules meet the evaluation criteria?

The EPA has reviewed the submitted rules listed in Table 2 in accordance with the rule evaluation criteria described in Section II.B of this notice.

With respect to procedural requirements, CAA sections 110(a)(2) and 110(l) require SIP revisions to be adopted by the state after reasonable notice and public hearing. Based on our review of the public process documentation included in the 2021 Submittal for the amended rules listed in Table 2 and included in the 2001 and 2020 Submittals for the rescinded rules listed in Tables 3 and 4, we find that the AVAQMD has provided sufficient evidence of public notice, opportunity for comment, and a public hearing prior to the adoption, rescission, and submittal of these rules to the EPA.

We have determined that while the submitted rules mostly satisfy the statutory and regulatory requirements in parts C and D of the Act (including sections 172, 173, 182(c)(6) and

182(d)), section 110(a)(2) (including 110(a)(2)(A) and 110(a)(2)(E)(i)) and 302(z) of the Act, and 40 CFR 51.160-51.165 and 51.307, and strengthen the SIP, they also contain deficiencies that prevent full approval. We describe these identified deficiencies in Section II.D of this notice. Our TSD contains a more detailed evaluation of the deficiencies, as well as recommendations for program improvements.

D. What are the rule deficiencies?

The EPA identified the following deficiencies in the rules proposed for inclusion in the SIP. Our TSD, which can be found in the docket for this proposed action, contains a more detailed discussion for our proposed action.

1. Simultaneous Emission Reductions (SERs) Calculation Methodology

SERs, as defined in 1301(UUU), are a "Federally Enforceable reduction in the emissions of an existing Emissions Unit(s), calculated pursuant to the provisions of District Rule 1304(C)." As the name suggests, these are emission reductions that are proposed to occur in conjunction with emission increases from a proposed project. SERs calculated pursuant to 1304(C)(2)(d) are required to be based on real emissions reductions pursuant to 1301(A), 1301(LLL), and 1304(C)(1).[6] SERs are used for the following purposes under the District's NSR rules: (1) as Offsets pursuant to 1301(AAA) and 1305(C)(2),[7] (2) to determine the Net Emission Increase (NEI) for determining whether a project at a Modified Major Facility is a Major Modification pursuant to 1301(UU) and the related provisions in 1301(MM), 1301(RR), 1301(TTT), and 1304(B)(2);[8] and (3) to determine the amount of Offsets required at a new or Modified Facility pursuant to 1302(C)(3) and 1303(B)(1).[9]

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[6] Rule 1301(A) is the definition for Actual Emissions, 1301(LLL) is the definition for Real, and 1304(C)(1) states that "SERs as defined in District Rule 1301(UUU) may result from the Modification or shut down of Existing Emission Unit(s) so long as the resulting reductions are Federally Enforceable, Real, Surplus, Permanent, Quantifiable and Enforceable, and are reductions in of the Emissions Unit(s)."

[7] Rule 1301(AAA) is the definition of Offset Emission Reductions (Offsets), and 1305(C)(2) provides the eligibility requirements for SERs used as offsets.

[8] Rule 1301(MM) is the definition for Major Modification, 1301(RR) is the definition for Modification (Modified), 1301(TTT) is the definition for Significant, and 1304(B)(2) provides the NEI calculation procedures.

[9] Rule 1302(C)(3) provides the District's procedures for the determination of offsets, and Rule 1303(B)(1) states the District's procedures for determining the amount of offsets required.

The EPA has identified deficiencies in how the District calculates and applies SERs. Rule 1304(C)(2)(d) allows SERs to be calculated using a potential-to-emit (PTE)-to-PTE calculation method rather than an actuals-to-PTE calculation method. Specifically, 1304(C)(2)(d) states that, in the case of a Modified Major Facility, the historic actual emissions (HAE) for a specific Emission Unit may in some circumstances be equal to the Potential to Emit for that Emission Unit if the particular Emission Unit has been previously offset in a documented prior permitting action.

CAA section 173(c)(1) requires that the SIP must contain provisions to assure that emission increases from new or modified major stationary sources are offset by real reductions in actual emissions. In addition, 40 CFR 51.165(a)(3)(i) specifies that the baseline for determining credit for emissions reductions shall be the "actual" emissions of the source from which the offset credit is obtained where the demonstration of reasonable further progress (RFP) and attainment of the NAAQS is based upon the actual emissions of sources located within the nonattainment area. The District's attainment plan and demonstration of RFP are based on actual emissions. SERs calculated pursuant to 1304(C)(2)(d) and used as offsets pursuant to 1301(AAA) and 1305(C)(2) may not be real reductions in actual emissions as required by CAA section 173(c)(1) because the provision allows an Emission Unit's potential to emit, rather than historic actual emissions to be used as the baseline for the calculations. Calculating emissions decreases using a potential emissions baseline allows reductions "on paper" that do not represent real emissions reductions. Under the CAA, such paper reductions cannot be used to offset actual emission increases. Moreover, since SERs calculated using a potential to emit baseline are not based on real reductions in actual emissions as required in CAA section 173(c)(1), it makes offsets that rely on the use of such SERs deficient.

As discussed in the preceding paragraph, SERs calculated pursuant to 1304(C)(2)(d) may not represent real reductions in actual emissions because the provision allows an Emission Unit's potential to emit, rather than historic actual emissions, to be used as the baseline for calculating

emission decreases. This provision is inconsistent with the plain language of the definition of "net emissions increase" (NEI) found in 40 CFR 51.165(a)(1)(vi)(E)(1), which states that: "A decrease in actual emissions is creditable only to the extent that the old level of actual emission or the old level of allowable emissions whichever is lower, exceeds the new level of actual emissions." Therefore, we find the definition of NEI in 1301(UU) and all related provisions in 1301(MM), 1301(RR), 1301(TTT), and 1304(B)(2) are deficient.

40 CFR 51.165(a)(3)(ii)(J) requires that the increased emissions, in tons per year, resulting from a major modification that must be offset in accordance with section 173(c)(1) of the Act shall be determined by summing the difference between the allowable emissions after the modification and the actual emissions before the modification for each emissions unit. SERs calculated pursuant to 1304(C)(2)(d) and used to determine the quantity of offsets required at a new or Modified Facility pursuant to 1303(B)(1) may not be based on the difference between the allowable emissions after the modification and the actual emissions before the modification for each emissions unit as required by 40 CFR 51.165(a)(3)(ii)(J). Therefore, because 1303(B)(1) allows SERs to be used to calculate the quantity of offsets required, we find this provision to be deficient, as well as 1302(C)(3).

These three deficiencies identified in the preceding paragraphs make portions of Rules 1301, 1302, 1303, 1304, and 1305 not fully approvable. Deviations from federal definitions and requirements are generally approvable only if a state specifically demonstrates that the submitted provisions are more stringent, or at least as stringent, in all respects as the corresponding federal provisions and definitions. See 40 CFR 51.165(a)(1) and 51.165(a)(2)(ii). These deficiencies may be corrected by revising 1304(C)(2)(d) to require HAE or actual emissions, rather than PTE, to always be used when calculating SERs, regardless of whether "the particular Emissions Unit ha[s] been previously offset" in a past NSR permit action. The District may also correct the deficiencies by providing a revised calculation method that meets or is at least as stringent as the requirements in CAA section 173(c)(1), 40 CFR 51.165(a)(3)(i), 40 CFR 51.165(a)(1)(vi)(E)(1),

and 40 CFR 51.165(a)(3)(ii)(J).

2. Calculation Method for Determining HAE

Rule 1304(E)(2) defines the calculation method for determining the HAE as it relates to emission changes at a Facility pursuant to 1304. Rule 1304(E)(2) states that HAE, in pounds per year, is the actual emissions of an emission unit, "(i) . . . averaged from the 2-year period which immediately proceeds the date of application and which is representative of Facility operations; or (ii) averaged for any 2 years of the 5-year period which immediately precedes the date of application which the APCO has determined is more representative of Facility operations . . . ."

The provision contains a typographical error making the provision deficient. The actual emissions must be based on emissions emitted preceding the date of application. This deficiency may be corrected by replacing the word "proceeds" with "precedes" in Rule 1304(E)(2)(i).

3. Use of Contracts

The District rule provisions 1302(D)(6)(a)(iii), 1304(C)(4)(c), 1309(D)(3)(c), and 1309(E)(6) are used to meet requirements in CAA section 173(c)(1), and 40 CFR 51.165(a)(3)(ii)(G) and 40 CFR 51.165(a)(3)(ii)(J). The provisions allow an owner and/or operator to obtain a valid District permit or "contract" enforceable by the District. The terms "Authority to Construct (ATC)" and "Permit to Operate (PTO)" are defined in Rule 1301(H) and 1301(CCC), respectively. SIP-approved Rules 201, 203, and 204 provide additional requirements for ATCs and PTOs. However, neither the NSR rules submitted for approval nor any other SIP-approved NSR rules define the term "contract" or provide requirements for how a contract is an enforceable mechanism that may be used in the same way as an ATC or PTO. For this reason, rule sections 1302(D)(6)(a)(iii), 1304(C)(4)(c), 1309(D)(3)(c), and 1309(E)(6) are deficient and therefore are not fully approvable. This deficiency may be corrected by either removing the term "contract" or adding provisions that define and delineate how a contract is a federally enforceable mechanism that may be used in the same way as an ATC or a PTO.

4. Interprecursor Trading

Rule 1305(C)(6) allows interprecursor trading (IPT) between nonattainment pollutants and their precursors on a case-by-case basis. A footnote to this section states: "Use of this subsection [is] subject to the Ruling in *Sierra Club v. EPA*, 985 F.3d 1055 (D.C. Cir. 2021) and subsequent guidance as issued by USEPA." This footnote appears to reference the D.C. Circuit Court of Appeals decision issued on January 29, 2021,[10] vacating the provisions of the 2018 Implementation Rule that allowed IPT for the ozone precursors volatile organic compounds (VOCs) and nitrogen oxides (NO_X).[11] On July 19, 2021, the EPA issued a final rulemaking that removed the IPT provisions found in 40 CFR 51.165(a)(11) pertaining to ozone precursors, consistent with the D.C. Circuit Court decision.[12] Therefore, the provision in Rule 1305(C)(6) allowing IPT for ozone precursors is no longer permissible under EPA regulations. Accordingly, we find Rule 1305 deficient in this regard. We acknowledge the District's attempt to address the D.C. Circuit Court decision, but with the EPA's revisions to the NSR regulations, the District must revise Rule 1305(C)(6) to make clear that IPT is not permissible for ozone precursors.

5. De Minimis Rule

Pursuant to section 182(c) and (d) of the CAA, the SIP requirements for Severe nonattainment areas must include all the provisions under section 182(c) for Serious nonattainment areas as well as the SIP requirements in section 182(d) for Severe ozone nonattainment areas. CAA section 182(c)(6) requires that the NSR provisions in the SIP "shall ensure increased emissions of volatile organic compounds resulting from any physical change in, or change in the method of operation of, a stationary source located in the area shall not be considered de minimis for purposes of determining the applicability of the permit requirements established by this Act unless the increase in net emissions of such air pollutant from such source does not exceed 25 tons when aggregated with all other net increases in emissions from the

[10] *Sierra Club v. EPA*, 21 F.4th 815 (D.C. Cir. 2021). This is the same D.C. Circuit Court decision cited in Rule 1305; the Court simply updated the citation.
[11] 83 FR 62998 (December 6, 2018).
[12] 86 FR 37918 (July 19, 2021).

source over any period of 5 consecutive calendar years which includes the calendar year in which such increase occurred." The de minimis SIP requirements in CAA section 182(c)(6) are not provided in AVAQMD's submitted nonattainment NSR rules. Therefore, the District rules are deficient and not fully approvable with respect to CAA section 182(c)(6) or purposes of determining the applicability of the NSR permit requirements. This deficiency may be corrected by incorporating the de minimis SIP requirements in CAA section 182(c)(6) in the Regulation XIII nonattainment NSR rules.

Our TSD, which can be found in the docket for this proposed action, contains a more detailed discussion of the rule deficiencies as well as a complete analysis of the District's submitted rules that form the basis for our proposed action.

III. Proposed Action and Public Comment

The EPA is proposing approval of AVAQMD Rules 219, 1300, and 1306 as authorized in section 110(k)(3) of the Act. If a portion of a plan revision meets all the applicable CAA requirements, CAA sections 110(k)(3) and 301(a) authorize the EPA to approve the plan revision in part and disapprove the plan revision in part. The EPA is proposing a limited approval and limited disapproval of Rules 1301, 1302, 1303, 1304, 1305, and 1309 as authorized in sections 110(k)(3) and 301(a) of the Act because although they fulfill most of the relevant CAA requirements and strengthen the SIP, they also contain six deficiencies as discussed in Section II.D of this notice.

Regarding the additional substantive requirements of CAA sections 110(l) and 193, our proposed action will result in a more stringent SIP, while not relaxing any existing provision contained in the SIP. We have concluded that our action would comply with section 110(l) because it will not interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable CAA requirement. In addition, our proposed action will not relax any pre-November 15, 1990 requirement in the SIP, therefore changes to the SIP resulting from this action ensure greater or equivalent emission reductions of ozone and its

precursors in the District. Accordingly, we have concluded that our action is consistent with the requirements of CAA section 193.

If we finalize this action as proposed, our action will be codified through revisions to 40 CFR 52.220 (Identification of plan - in part). This action would incorporate the submitted rules into the SIP, including those provisions identified as deficient. This approval is limited because the EPA is simultaneously proposing a limited disapproval of Rules 1301, 1302, 1303, 1304, 1305, and 1309 under CAA sections 110(k)(3) and 301(a).

In conjunction with our SIP approval of the District's visibility provisions for major sources subject to review under the NNSR program, we also propose to revise 40 CFR 52.281(d) regarding applicability of the visibility Federal Implementation Plan (FIP) at 40 CFR 52.28 as it pertains to California. Approval of the District's visibility provisions under 40 CFR 51.307 would mean that this FIP is not needed to satisfy the CAA visibility requirements at 40 CFR 51.307 for sources subject to the District's NNSR program. This revision will clarify the application of this FIP in California following our final action.

If finalized as proposed, our limited disapproval action would trigger an obligation on the EPA to promulgate a FIP unless the State corrects the deficiencies, and the EPA approves the related plan revisions, within two years of the final action. Additionally, because the deficiencies relate to NNSR requirements under part D of title I of the Act, the offset sanction in CAA section 179(b)(2) would apply in the AVAQMD's jurisdiction 18 months after the effective date of a final limited disapproval, and the highway funding sanctions in CAA section 179(b)(1) would apply in the area six months after the offset sanction is imposed. Section 179 sanctions will not be imposed under the CAA if the State submits, and we approve, prior to the implementation of the sanctions, a SIP revision that corrects the deficiencies that we identify in our final action. The EPA intends to work with the District to correct the deficiencies in a timely manner.

We will accept comments from the public on this proposal until **[Insert date 30 days after date of publication in the *Federal Register*]**.

IV. Incorporation by Reference

In this rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the AVAQMD rules listed in Table 2 of this preamble, which contain the District's NSR permitting program for new and modified sources of air pollution under part D of title I of the CAA. The EPA has made, and will continue to make, these materials available through *https://www.regulations.gov* and in hard copy at the EPA Region IX Office (please contact the person identified in the "**FOR FURTHER INFORMATION CONTACT"** section of this preamble for more information).
information).

V. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *https://www2.epa.gov/laws-regulations/laws-and-executive-orders*.

A. *Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review*

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

B. *Paperwork Reduction Act (PRA)*

This action does not impose an information collection burden under the PRA because this action does not impose additional requirements beyond those imposed by state law.

C. *Regulatory Flexibility Act (RFA)*

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities beyond those imposed by state law.

D. *Unfunded Mandates Reform Act (UMRA)*

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C.

1531–1538, and does not significantly or uniquely affect small governments. This action does not impose additional requirements beyond those imposed by state law. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, will result from this action.

E. *Executive Order 13132: Federalism*

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

F. *Executive Order 13175: Coordination with Indian Tribal Governments*

This action does not have tribal implications, as specified in Executive Order 13175, because the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction, and will not impose substantial direct costs on tribal governments or preempt tribal law. Thus, Executive Order 13175 does not apply to this action.

G. *Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks*

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of "covered regulatory action" in section 2-202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not impose additional requirements beyond those imposed by state law.

H. *Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use*

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

I. *National Technology Transfer and Advancement Act (NTTAA)*

Section 12(d) of the NTTAA directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. The EPA believes that this action is not subject to the requirements of section 12(d) of the NTTAA because application of those requirements would be inconsistent with the CAA.

J. *Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Population*

The State did not evaluate environmental justice considerations as part of its SIP submittal. There is no information in the record inconsistent with the stated goals of E.O. 12898 of achieving environmental justice for people of color, low-income populations, and indigenous peoples.

List of Subjects in 40 CFR Part 52

Environmental protection, Administrative practice and procedure, Air pollution control, Carbon oxides, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen oxides, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: January 19, 2023.

Martha Guzman Aceves,
Regional Administrator,
Region IX.

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